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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

UNITED STATES OF AMERICA,)

2:16-cr-100-GMN-CWH

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Plaintiff,

)

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v.

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)

JAN ROUVEN FUECHTNER,)

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Defendant.

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MOTION FOR SCENE VIEWING

Defendant herein, JAN ROUVEN FUECHTNER, by and through his attorneys of record, JESS R. MARCHESE, ESQ., and BENJAMIN C. DURHAM, ESQ., hereby files this MOTION FOR SCENE VIEWING.

DATED this 26th day of September, 2016,

/s/

JESS R. MARCHESE, ESQ.

Attorney for JAN ROUVEN FUECHTNER

POINTS AND AUTHORITIES

The issue presented is whether the court should exercise its discretion and allow an in person viewing of the defendant's home where the electronic devices were located that allegedly contained illegal pornography.

When ruling on motions for a jury view of the scene, courts have considered the following factors: (1) whether the view will be cumulative of other evidence (Fed. R. Evid. 403; Johnson v. WilliamC. Ellis & Sons Iron Works, Inc., 604 F.2d 950, 958 (5th Cir. 1979)); (2) whether the view will incur unwarranted delay and inconvenience (Hametner v. Villena, 361 F.2d 445, 445-46 (9th Cir. 1966)); (3) whether the view will expose the jury to prejudicial comments or conditions (Lopez v. Thurmer, 573 F.3d 484, 494-96 (7th Cir. 2009)); (4) whether the view has changed in appearance since the event in question, although that will not necessarily bar a jury view of the scene (Dugas v. Coplan, 506 F.3d 1, 12-13 (1st Cir. 2007); N.W.Nat'l Cas. Co., 533 F.2d at 323); and (5) whether the view will invite jury members to tamper or experiment with the site, although this alone is not sufficient ground for refusing to permit the view (Clemente v. Carnicon-P.R. Mgmt. Assocs., L.C., 52 F.3d 383, 387 n.4 (1st Cir. 1995), *abrogated on other grounds by* United States v. Gray, 199 F.3d 547, 548 (1st Cir. 1999)).

In this case, the defendant prays for an order allowing the jury or the judge to view his residence. The trier of fact will be aided greatly if given the ability to see the defendant's home.

When applying the above factors to the instant case, Mr. Fuechtener would argue that all five are in favor of granting his motion. In reference to the first factor, seeing the actual scene would not be cumulative of the anticipated evidence to be introduced at trial. Although pictures of the residence will certainly be helpful, they cannot illustrate the sheer enormity of the residence or spatial reference of the vantage points in the home. Further, although many pictures

The jury or judge, depending on what the government and court chooses, would not be prejudiced. There would not be any outside influences at the location during the viewing and only court staff and the parties would be present.

Based upon the above, Mr. Fuechtener submits that a viewing of the premises for trial would be advantageous to the trier of fact in this case and should therefore be ordered.

/s/
 JESS R. MARCHESE, ESQ.
 Attorney for JAN ROUVEN FUECHTENER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was filed on
September 26, 2016 via the Southern District of Nevada ECF system to the following registered
recipients:

Ms. Cristina Silva, Esq.
Ms. Elham "Ellie" Roohani , Esq.
United States Attorney's Office

/s/
Employee of Jess R. Marchese, Esq.